



Paper No. 4

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OFFICE OF PETITIONS

In re Application of :
Lamorey et al. :
Application No. 09/683,712 : DECISION GRANTING
Filed: 6 February, 2002 : PETITION
Attorney Docket No. BUR920010092 :

This is a decision on the petition filed on 9 May, 2002 (certificate of mailing date 25 April, 2002), requesting that the above-identified application be accorded a filing date of 6 February, 2002, with Figure 1 described in the specification as a part of the original disclosure.

The petition is **GRANTED**.

The application was filed electronically via the Office's Electronic Filing System (EFS) on 6 February, 2002. On 4 March, 2002, however, Initial Patent Examination Division mailed a Notice of Omitted Items in a Nonprovisional Application, stating that the application had been accorded a filing date of 6 February, 2002, but that Figure 1 described in the specification appeared to have been omitted.

Petitioners assert that Figure 1 was submitted with the original application EFS submission on 6 February, 2002. In support, petitioners have included a copy of the Acknowledgment Receipt, with a time stamp date of 6 February, 2002, acknowledging receipt of, *inter alia*, "sh1.tif". Petitioners therefore assert that Figure 1 of the drawings was received by the Office on 6 February, 2002.

Upon a review of the Office EFS database, one sheet (1) containing a drawing labeled Figure 1 has been located among the files received on 6 February, 2002, in the file tagged "sh1.tif". However, the drawings were not properly XML tagged when

transmitted such that when the Office printed the electronic file, Figure 1 was not printed at all and Figure 2, which was tagged as a figure twice with XML tags, was printed twice. As Figure 1, in electronic format, is still in the possession of the USPTO, the improperly XML tagged application, including Figure 1, is entitled to a filing date of 6 February, 2002.

Petitioners are cautioned that while in this case the electronic copy of the filing was retained and could be used to print a paper drawing of Figure 1 as a result of special handling by the Office, in some circumstances an electronic copy may not be available or usable to correct an applicant's filing error if applicant fails to comply with the Office's electronic filing procedures.

Since the present petition, and special handling of this application, was necessitated by applicant's filing error, a petition fee of \$130.00 will be charged to counsel's deposit account, No. 09-0456.

The application will be processed and examined using the copy of Figure 1 printed from the Office's retained copy of the EFS submission. The copy of Figure 1 supplied with the present petition will not be used for processing or examination, but will be retained in the application file.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of 6 February, 2002, using the application papers filed on that date, including the one (1) sheet of drawings containing Figure 1 and the first sheet only of the two (2) drawing sheets containing Figure 2 located in the application file.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6918.



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